



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI

GOVERNOR

DAVID P. LITTELL

COMMISSIONER

MEMORANDUM

TO: Board of Environmental Protection
FROM: *RWS*
Ron Severance, Bureau of Air Quality
DATE: May 15, 2008
RE: Adoption. Chapter 150 Control of Emissions from Outdoor Wood Boilers
(amended pursuant to Resolve Chapter 190)

Statutory and Regulatory Reference:

A Statutory authority

38 MRSA Section 585-A provides that the Board of Environmental Protection "may establish and amend regulations to implement ambient air quality standards and emission standards. These regulations shall be designed to achieve and maintain ambient air quality standards and emission standards within any region and prevent air pollution."

B Specific legal mandates requiring adoption

38 MRSA Section 610-B establishes particulate emission standards for outdoor wood boilers sold in Maine beginning April 1, 2008 and directs the Department to adopt rules that regulate the sale, installation, siting, operation, labeling and use of outdoor wood boilers, also known as outdoor wood-fired hydronic heaters.

Resolve Chapter 190, Regarding Legislative Review of Portions of Chapter 150 Control of Emissions from Outdoor Wood Boilers, a Major Substantive Rule of the Department of Environmental Protection, Bureau of Air Quality Control, (signed by the Governor 4/09/08 as emergency)

Location/Applicability:

The proposed regulation will apply statewide.

Description:

In June 2007, the Legislature enacted 38 MRSA Section 610-B, Outdoor wood boilers which established a Phase I particulate emission standard of 0.60 lbs/MMBTU effective April 1, 2008 and a Phase II particulate emission standard of 0.32 lbs/MMBTU effective April 1, 2010. The

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legislature directed the Department to adopt a rule including the emission standards, setbacks and stack height requirements, operation and label requirements, dealer and manufacturer reporting, and definition of nuisance conditions specifically relating to the operation of outdoor wood boilers. Rules adopted pursuant to Section 610-B were adopted as emergency major substantive rules pursuant to Title 5, section 8073 and must be submitted to the Legislature for review by January 15, 2008.

On August 16, 2007, the Board of Environmental Protection held a public hearing on the Department's proposed Chapter 150, Control of Emissions from Outdoor Wood Boilers. The comment period remained open until August 31, 2007. The proposed Chapter 150 established requirements for the sale and installation of new outdoor wood boilers, including particulate emission standards, requirements for setback and stack height, analysis requirement for those commercial boilers, certification, sell-through of existing inventory, and labeling. The proposed rule also contained general provisions which apply to all outdoor wood boilers. These provisions included prohibited and allowed fuels, visible emissions standards, notice to buyers, and owner manual requirements. Additionally, pursuant to the new legislation, for the purpose of this rule the Department proposed a definition of "nuisance" and a method by which a nuisance condition can be identified. The BEP adopted Chapter 150 which became effective November 1, 2007.

In April 2008, the Maine Legislature enacted Resolve Chapter 190, Regarding Legislative Review of Portions of Chapter 150: Control of Emissions from Outdoor Wood Boilers, a Major Substantive Rule of the Department of Environmental Protection, Bureau of Air Quality Control. This legislation requires amendments to Chapter 150 in several areas:

Sell-through exemption: In order to be eligible for the sell-through exemption contained in the rule the outdoor wood boiler must have been purchased, paid for in full and in the State of Maine prior to April 1, 2008.

Setbacks to neighbors: The legislation authorizes the optional use of setbacks from neighboring dwellings for the installation of new outdoor wood boilers in addition to the setbacks to the nearest property line. Outdoor wood boilers with a particulate emission limit greater than 0.60 lbs/MMBtu heat input, those with a particulate emission limit of 0.60 lbs/MMBtu heat input and those with a particulate emission limit of 0.32 lbs/MMBtu heat output may be installed 270 ft, 120 ft and 70 ft, respectively, to the nearest dwelling that is not on the same property as the boiler.

Setbacks to facilities: Setbacks from state licensed school, daycare or healthcare facilities must conform to the general setback requirements. Therefore, the 500 foot setback requirement to these facilities has been deleted from the rule.

The Resolve became effective April 9, 2008, the day the Governor signed the enacted law (attached).

The Board must finally adopt Chapter 150 within 60 days of the date the Governor signed the enacted law. The final adoption package is then filed with the Secretary of State. The rule becomes effective 30 days after filing with the Secretary of State.

Environmental Issues:

In addition to fine particulates, wood combustion emissions contain sulfur oxides, nitrogen oxides, carbon monoxide and potentially cancer-causing compounds including formaldehyde, polycyclic aromatic hydrocarbons, benzene and dioxins. Fine particulates can aggravate lung diseases such as asthma, emphysema and bronchitis. Children, the elderly and those with respiratory problems are most at risk from exposure to wood smoke.

Departmental Recommendation:

The Department recommends that the Board adopt Chapter 150 Control of Emissions from Outdoor Wood Boilers as presented.

Estimated Time of Presentation:

15 minutes



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**Resolve, Regarding Legislative Review of Portions of
Chapter 150: Control of Emissions from Outdoor Wood
Boilers, a Major Substantive Rule of the Department of
Environmental Protection, Bureau of Air Quality
Control**

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency, and

Whereas, the above-named major substantive rule has been submitted to the Legislature for review, and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Sec. 1. Adoption. Resolved: That final adoption of portions of Chapter 150 Control of Emissions from Outdoor Wood Boilers, a provisionally adopted major substantive rule of the Department of Environmental Protection, Bureau of Air Quality Control that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is authorized only if the rule is amended as follows

1 The provision identified in the rule as Section 3, paragraph F regarding sell-through exemptions must be amended to add language indicating that the provision applies to outdoor wood boilers that were purchased and paid for in full before April 1, 2008 in addition to being received in the State before April 1, 2008,

2 The setback requirements for new outdoor wood boilers identified in the rule in Section 3, paragraph B must be amended to authorize installation of new outdoor wood boilers with setbacks from the nearest dwelling as follows

A The provision in the rule identified as subparagraph (1) regarding outdoor wood boilers with limits greater than 0.60 lbs/MMBtu heat input or with no certification must be amended to authorize installation at least 250 feet from the nearest property line or at least 270 feet from the nearest dwelling that is not on the same property as the boiler,

B The provision in the rule identified as subparagraph (2) regarding outdoor wood boilers certified to meet particulate emission limits of 0.60 lbs/MMBtu heat input must be amended to authorize installation at least 100 feet from the nearest property line or at least 120 feet from the nearest dwelling that is not on the same property as the boiler, and

C The provision in the rule identified as subparagraph (3) regarding outdoor wood boilers certified to meet particulate emission limits of 0.32 lbs/MMBtu heat output must be amended to authorize installation at least 50 feet from the nearest property line or at least 70 feet from the nearest dwelling that is not on the same property as the boiler, and

3 The setback provision, identified in the rule in Section 3, paragraph B, subparagraph (4), for the installation of an outdoor wood boiler next to a state licensed school, daycare or healthcare facility must be amended to conform to the general setback requirements identified in Section 3, paragraph B, subparagraphs (1), (2) and (3) as amended by section 1, subsection 2 of this resolve

The Department of Environmental Protection is not required to hold hearings or conduct other formal proceedings prior to finally adopting the rule in accordance with section 1 of this resolve, and be it further

Sec. 2. Report. Resolved: That, by January 1, 2009, the Department of Environmental Protection shall submit to the joint standing committee of the Legislature having jurisdiction over natural resources matters a report detailing the implementation of the rule authorized by section 1 of this resolve. The report must include an evaluation of any unintended consequences of the rule and recommendations for improvement of the rule; and be it further

Sec. 3. Rules regarding outdoor wood boilers that combust biomass pellets. Resolved: That, by April 1, 2009, the Board of Environmental Protection shall adopt rules to control the sale, installation, use and siting at residences and businesses of outdoor wood boilers that combust biomass pellets as a fuel source. The rules must establish minimum standards of performance for units sold, purchased and installed in the State. The initial rules adopted pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A. An amendment to a rule adopted pursuant to this section is considered a major substantive rule and is subject to legislative review in accordance with Title 5, chapter 375, subchapter 2-A.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved

